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Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**Docket Number (Optional)
ACSES-52008 (1816P)

First Named Inventor: Kent C. B. Stalker

Art Unit: 3764

Application Number: 09/476,689

Examiner: Phillip A. Gray

Filed: December 30, 1999

Title: DEVICE FOR AND METHOD OF BLOCKING EMBOLI IN VESSELS SUCH AS BLOOD ARTERIES

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee.
- (2) Reply and/or issue fee.
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay.

1. Petition fee☐ Small entity - fee \$ _____ (37 CFR 1.17(l)). Applicant claims small entity status.
See 37 CFR 1.27.☒ Other than small entity - fee \$ 500.00 (37 CFR 1.17(l)).**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in the form of

Amendment

(identify the type of reply):

- ☐
- has been filed previously on _____
-
- ☒
- is enclosed herewith.

09/06/2006 SLUANG1 00000029 09476689

B. The issue fee of \$ _____

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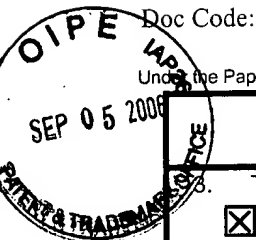
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- ☐
- has been paid previously on _____
-
- ☐
- is enclosed herewith.

(Page 1 of 3)

This collection of information is required by 37 CFR 1.137(a) The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/61 (10-05)
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Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

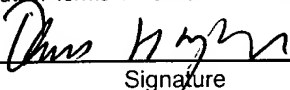
3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ or a small entity or \$ _____ (other than a small entity) disclaiming the required period of time enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and



Signature

August 30, 2006

Date

THOMAS H. MAJCHER

Typed or printed name

31,119

Registration Number, if applicable

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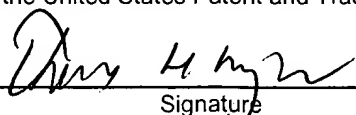
Enclosure ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☐ Additional sheets containing statements establishing unavoidable delay☐**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

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August 30, 2006

Date



Signature

THOMAS H. MAJCHER

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SEP 05 2006

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PTO/SB/61 (10-05)

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

Signature

AUGUST 30, 2006

Date

THOMAS H. MAJCHER

Typed or printed name

31,119

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

Applicant's response to the January 9, 2006 Office Action was timely filed with the U.S. Patent & Trademark Office on April 5, 2006, as witnessed by the attached copies of the filed documentation and proof of initial mailing.

(Please attach additional sheets if additional space is needed.)



Client ID/Matter No.: ACSES 52008 (1816P)

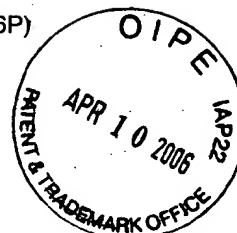
Date Mailed: April 5, 2006

Date Due: April 9, 2006

Serial No. 09/476,689

Date Filed: December 30, 1999

Applicants: Kent C.B. Stalker



Title: DEVICE FOR AND METHOD OF BLOCKING EMBOLI IN
VESSELS SUCH AS BLOOD ARTERIES

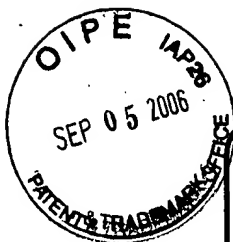
Documents enclosed:

1. Transmittal (PTO/SB/21)
2. Amendment

The U.S. Patent and Trademark Office Mail Room stamp hereon acknowledges receipt of the items indicated above on the date shown.

THMmmw

20732.1



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PTO/SB/21 (09-04)

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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/476,689	
	Filing Date	December 30, 1999	
	First Named Inventor	Kent C.B. Stalker	
	Art Unit	3764	
	Examiner Name	Gray, Phillip A	
Total Number of Pages in This Submission	10	Attorney Docket Number	ACSES-52008

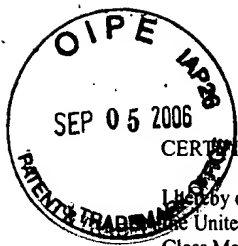
ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
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<input type="checkbox"/> Response to Missing Parts/ Incomplete Application	Remarks	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	Deposit Account 06-2425	

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm Name	FULWIDER PATTON LLP	
Signature		
Printed name	Thomas H. Majcher	
Date	APRIL 5, 2006	Reg. No. 31,119

CERTIFICATE OF TRANSMISSION/MAILING			
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Signature			
Typed or printed name	Thomas H. Majcher	Date	APRIL 5, 2006

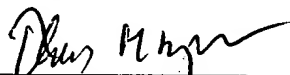
This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Thomas H. Majcher, Reg. No. 31,119

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No. : 09/476,689 Confirmation No. 8160
Applicant : Kent C.B. Stalker
Filed : December 30, 1999
Art Unit : 3764
Examiner : Gray, Phillip A
Title : DEVICE FOR, AND METHOD OF, BLOCKING EMBOLI IN
VESSELS SUCH AS BLOOD ARTERIES

Docket No.: : ACSES 52008 (1816P) Los Angeles, California
Customer No. : 24201 April 5, 2006

Mail Stop: Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT

Dear Sir:

This Amendment is made to the Office Action of January 9, 2006, the response for which is due April 9, 2006.

Claims start on page 2.

Remarks start on page 7.

LISTING OF CLAIMS:

The listing of claims will replace all prior versions, and listings, of claims in the application:

1 – 22 (Canceled)

23. (Previously Presented) A filtering device for blocking the passage of emboli through a body vessel, comprising:

a filtering portion including a directional member made from a pliable material having properties of blocking the passage of the fluid and the emboli and being expandable by the fluid flow in the body vessel, wherein the pliable material does not have self-expanding properties; and

a filtering member attached to the directional member and made from a material to block the passage of the emboli, the filtering member being expandable by the expansion of the directional member.

24. (Previously Presented) The filtering device of claim 23, wherein:

the filtering member is made from a material selected from a group consisting of blood filter material and a braided/woven biocompatible material.

25. (Previously Presented) The filtering device of claim 23, further including:

an elongate tubing adapted to allow an interventional device to be advanced over it to position the interventional device within the body lumen, the elongate tubing having a lumen extending therethrough, wherein the filtering portion and filtering member are disposed in the lumen in a delivery position.

26. (Previously Presented) The filtering device of claim 25, further including:

a shaft member slidably disposed in the lumen of the elongate tubing for moving the filtering portion and filtering member out of the lumen of the elongate tubing.

27. (Previously Presented) The filtering device of claim 23, wherein:

the directional member is elongated to be disposed against the vessel wall and is disposed relative to the filtering member to direct fluid and the emboli into the filtering member.

28. (Previously Presented) The filtering device of claim 25, further including:

a plurality of restraining wires attached to the directional member and extending along the length of the elongate member, the restraining wires being retractable from a location outside the body vessel to collapse the directional member.

29. (Previously Presented) The filtering device of claim 23 wherein:

the directional member directs body fluid into the filtering member.

30. (Previously Presented) The filtering device of claim 23, wherein

the directional member has a truncated conical shape when placed in an expanded position.

31. (Previously Presented) A filtering device for blocking the passage of emboli through a body vessel, comprising:

an elongate tubing having a proximal end and a distal end, the elongate tubing having an outer surface and a lumen extending therethrough and being adapted to have interventional devices advanced over the outer surface to position an interventional device within the body vessel;

a filtering portion including a filtering member made from a material to filter emboli entrained in the body fluid of the vessel, the filtering portion and filtering member being stored within the lumen of the elongate tubing in a delivery configuration; and

a shaft member movable within the lumen of the elongate tubular for moving the filtering portion and filtering member out of the lumen.

32. (Previously Presented) The filtering device of claim 31, wherein:

the elongate tubing includes a plurality of restraining wires attached to the filtering portion and extending along the length of the tubing, the restraining wires being retractable from a location outside the body vessel to collapse the filtering portion.

33. (Previously Presented) The filtering device of claim 32, wherein:

the filtering member has an inlet opening and the restraining wires are retractable to draw at least the inlet opening of the filtering member into a recovery sheath.

34. (Previously Presented) The filtering device of claim 32, wherein:

the plurality of restraining wires extending within the lumen of the elongate tubing.

35. (Previously Presented) The filtering device of claim 31, wherein:

the shaft member contacts the interior of the filtering member to move the filtering portion and filtering member out of the lumen of the elongate shaft.

36. (Previously Presented) The filtering device of claim 31, wherein:

the filtering portion includes a directional member made from a pliable material having properties of blocking the passage of the fluid and being expandable by the fluid flow in the vessel, and

the filtering member is attached to the directional member, the filtering member being expandable by the expansion of the directional member.

37. (Previously Presented) A filtering device for blocking the passage of emboli through a body vessel, comprising:

an elongate tubing having a proximal end, a distal end, and a lumen extending from the distal end to the proximal end, the elongate tubing adapted to have an interventional device advanced over it to position the interventional device within the body vessel;

means for filtering emboli from the fluid in the body vessel, said means being disposed within the lumen of the elongated tubing in a delivery position; and

means for deploying the filtering means from the lumen into the body vessel.

38. (Previously Presented) The filtering device of claim 37, wherein:

the deploying means is a shaft member movable within the lumen of the elongate tubing for moving the filtering means out of the lumen of the elongate tubing.

39. (Previously Presented) The filtering device of claim 37, further including:

means for retracting the filtering means at least partially back into the lumen.

40. (Previously Presented) The filtering device of claim 39, wherein:

the retraction means includes at least two wire members connected to the filtering means.

41. (Currently Amended) A filtering device for blocking the passage of emboli through a body vessel, comprising:

an elongate tubing having a proximal end, a distal end and a lumen extend from the proximal end to the distal end, the elongate tubing being adapted to have an interventional device advanced over it to position the interventional device within the body vessel;

a plurality of wires ~~coupled to~~ disposed within the lumen of the elongate tubing;

a filter coupled to at least two of the plurality of wires, the filter being adapted to filter material from the body vessel; and

means for preventing the plurality of wires from extending outwardly from the lumen until the filter is to be deployed in the body vessel.

42. (Previously Presented) The filtering device of claim 41, wherein:

the plurality of wires extend outwardly from the lumen when the filter is deployed.

43. (Previously Presented) The filtering device of claim 41, wherein:

the plurality of wires hold the filter open when the filter is deployed.

44. (Previously Presented) The filtering device of claim 41, further including:

a shaft member slidably disposed within the lumen of the elongate tubing to move the filter out of the lumen.

REMARKS

This Amendment is in response to the Office Action dated January 9, 2006. Claims 23-44 are currently pending. By this Amendment, claim 41 has been amended to recite that the plurality of wires are disposed within the lumen of the elongate tubing, rather than being coupled to the tubing. Claim 41 was not amended for the purpose of distinguishing the currently claimed invention over the prior art, but rather, to provide the correct relationship of the wires relative to the elongate tubing. Favorable reconsideration of the pending claims is requested.

Claims 23-44 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,336,934 to Gilson et al. (the "Gilson patent"). The Examiner has indicated that the Gilson patent discloses an embolic protection device having a directional member (50) made from a pliable material having no self-expanding properties which is expandable by the fluid flow in the body vessel. The element which the Examiner has interpreted as the "directional member" is referred to as a filter support element (50) in the Gilson patent. This filter support element (50), also referred to as a "filter carrier" in the Gilson patent, is used to support the filter element (1) which is the material that actually filters the emboli in the body vessel. The filter element (1) in the Gilson patent corresponds to the "filtering member" recited in the pending claims.

The Examiner cites to Column 5, lines 30-40 of the Gilson patent to support his position that the filter support element (the directional member) is expandable by the fluid flow in the body vessel. However, a close reading of this passage shows that it is not the filter support element (50), but rather, the filter element (1) (the "filtering member") which expands in response to fluid flow in the body vessel. This passage reads as follows:

In one embodiment of the invention, the filter element comprises a flexible shaped polymeric component.

In another embodiment of the invention, the shaped polymeric component is constructed such that fluid flow through the component assists in opening the component from the collapsed position.

In a further embodiment of the invention, the shaped polymeric component is flexible and opens to make circumferential contact with the vessel wall by way of using the pressure drop across the exit filter face.

Thus, the Gilson patent is quite clear that it is the shape and structure of the flexible-shaped polymeric filter element which provides the means to expanding the device, not the filter support element (50). Therefore, the element which the Examiner believes constitutes the "directional member," as recited in claims 23-30, does not expand in the presence of fluid flow and thus fails to provide the function of the directional member in accordance with claims 23-30.

Applicant respectfully requests the Examiner to withdraw the Gilson patent as an anticipatory reference to claims 23-30.

The Examiner has taken the position that the Gilson patent shows the use of an embolic protection catheter device having an elongate tubing lumen or sheath which allows an interventional device to be advanced thereover into position in the body vessel. (Page 4 of the Office Action) However, Applicant strongly disagrees with the Examiner's position. While the Gilson patent does show the use of a restraining tubing or sheath which is slidably disposed over the filter member, this restraining tubing or sheath is not used in any fashion to slide interventional devices over its outer surface. Rather, it is the guide wire, which is attached to the filter member, which provides the sole means in the Gilson patent for advancing interventional devices into the target location in the body vessel. The Gilson patent is quite clear that the restraining tubing or sheath, also referred to as a catheter, is not used as a means for advancing interventional devices over its outer surface since the sheath or catheter is first removed from the guide wire to allow the interventional device to be advanced over the guide wire. Reference is made to Column 16, 17-21 of the Gilson patent which reads as follows:

Conveniently also when the filter has been deployed in a blood vessel, the catheter can be removed leaving a bare guidewire proximal to the filter for use with known devices such as balloon catheter and stent devices upstream of the filter.

Still further, Column 4, lines 47-52 of the Gilson patent reads as follows:

In a further embodiment of the invention, there is provided a device including a delivery catheter in which an external sheath is engagable with the filter element or filter carrier to provide push during delivery and is removable to allow maximum space in the vascular cross-section during an interventional procedure.

These passages in the Gilson patent clearly show that the interventional devices are advanced over the guide wire, rather than the restraining sheath or catheter. There simply is no support in the Gilson patent for the Examiner's position that the outer surface of the restraining sheath or catheter is used to advance interventional devices. Accordingly, Applicant respectfully requests the Examiner to withdraw the Gilson patent as an anticipatory reference as to rejected claims 31-44.

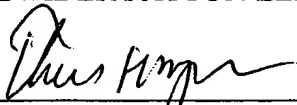
In view of the foregoing, it is respectfully urged that all of the present claims of the application are patentable and in a condition for allowance. The undersigned attorney can be reached at (310) 824-5555 to facilitate prosecution of this application, if necessary.

In light of the above amendments and remarks, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

FULWIDER PATTON LLP

By:



Thomas H. Majcher

Registration No. 31,119

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